

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:)
Entravision Holdings, LLC)
v.) CSC-388
EchoStar Communications Corporation)
Petition for Issuance of Show Cause Order)

MEMORANDUM OPINION AND ORDER

Adopted: August 28, 2002

Released: August 29, 2002

By the Deputy Chief, Media Bureau:

1. Entravision Holdings, LLC, licensee of commercial television station WVEN(TV), Channel 26, Daytona Beach, FL ("WVEN" or the "Station") filed the above-captioned petition for an order to show cause (the "Petition") regarding EchoStar Communications Corporation's ("EchoStar") alleged failure to comply with the Cable Services Bureau's Memorandum Report and Order in CSR-5758-M (the "Bureau Order").1 EchoStar filed an opposition to the complaint and Entravision filed a reply. For the reasons set forth below, we deny WVEN's Petition.

2. In the Bureau Order, we found that WVEN did not provide a good quality signal to EchoStar's local receive facility in the Orlando-Daytona Beach-Melbourne, FL designated market area.2 The Station's transmitter was damaged, causing WVEN to temporarily operate at an effective radiated power below that authorized in its license.3 Based upon WVEN's commitment to replace its transmitter and improve its quality signal at its own cost, we concluded that WVEN was entitled to mandatory carriage on EchoStar's satellite system within 75 days of the delivery of a good quality signal to EchoStar's local receive facility.4 The Bureau Order indicated that the responsibility fell on "WVEN to 'pay the costs of signal tests if necessary to prove that the signal is of good quality.'"5

3. In its Petition, WVEN states that it informed EchoStar by writing on December 20, 2001 that the station had returned to full power and "evidenced a good quality signal."6 EchoStar responded in

1 See Entravision Holdings, LLC, 16 FCC Rcd 22028 (2001) ("Bureau Order"). On March 25, 2002, the former Cable Services and Mass Media Bureaus were merged into the existing Media Bureau.

2 Bureau Order, 16 FCC Rcd at 22032.

3 Id. at 22031.

4 Id. at 22032.

5 Id.(citing DBS Must Carry Reconsideration Order, 16 FCC Rcd 16544, 16572 (2001)).

6 Petition at 2.

correspondence dated December 27, 2001, stating that once the existence of a good quality signal was verified, EchoStar would launch carriage of WVEN pursuant to the *Bureau Order*.⁷ EchoStar subsequently performed signal tests and, on January 29, 2002, wrote to WVEN's counsel indicating that the Station did not yet deliver a good quality signal to EchoStar's local receive facility.⁸ WVEN concedes that its signal quality remains insufficient to secure carriage on EchoStar's system, but affirms its commitment to improving its signal strength.⁹

4. WVEN argues that the primary issue in the instant proceeding is not whether the Station delivers a good quality signal to EchoStar's local receive facility, but whether EchoStar will carry WVEN on its main satellite system once the Station qualifies for carriage.¹⁰ According to WVEN, EchoStar has indicated that it intends to place the Station on a "wing" satellite separate from EchoStar's main continental United States ("CONUS") satellites.¹¹ WVEN seeks an order requiring EchoStar to immediately carry the Station on EchoStar's main satellite system. EchoStar carries most local stations, including local network affiliates, on its CONUS satellites, allowing these signals to be received through subscribers' existing receive dishes. In order for EchoStar subscribers to receive local stations carried on its "wing" satellites, a second reception dish is needed and can be obtained free of charge from the satellite carrier. In our recent *Declaratory Ruling and Order*, we found that EchoStar's "two-dish plan" as originally configured violates the prohibitions contained in Section 338(d) of the Act and Section 76.66(i) of the Commission's rules against discrimination in price, channel positioning and on-screen program guide and menu treatment.¹² The *Declaratory Ruling* sets forth certain conditions upon which a satellite carrier might carry local stations on a second dish.

5. With respect to the issue of signal strength, the record reflects that EchoStar has thus far complied with the *Bureau Order*, which requires it to carry WVEN within 75 days of the Station's delivery of a good quality signal to EchoStar's local receive facility. WVEN concedes that it does not yet have sufficient signal quality to qualify for mandatory carriage. Once the Station establishes that it delivers a good quality signal to EchoStar's local receive facility, the satellite carrier must carry WVEN pursuant to the *Bureau Order*. We reiterate that WVEN is responsible for proving that it is providing a good quality signal over-the-air, or arranging delivery of a good quality signal by other means. As to the manner in which WVEN will be carried once it qualifies for mandatory carriage, we find that EchoStar must carry the Station in a non-discriminatory manner consistent with Section 338 of the Communications Act of 1934, as amended, Section 76.66 of the Commission's rules and our recent *Declaratory Ruling and Order*.¹³

⁷ Petition at Exhibit B.

⁸ Opposition at 4, Exhibits.

⁹ Reply at 2.

¹⁰ Reply at 2-5.

¹¹ Petition at 3.

¹² See *National Association of Broadcasters and Association of Local Television Stations, Request for Modification or Clarification of Broadcast Carriage Rules for Satellite Carriers*, 17 FCC Rcd 6065 (2002) (Petitions for Reconsideration and Applications for Review pending) ("*Declaratory Ruling*").

¹³ See 47 U.S.C. § 338; 47 C.F.R. § 76.66; *Declaratory Ruling*, 17 FCC Rcd at 6065.

6. Accordingly, **IT IS ORDERED**, pursuant to Section 338 of the Communications Act, as amended, 47 U.S.C. § 338, and Section 76.66 of the Commission's rules, 47 C.F.R. § 76.66, that the petition to show cause filed by Entravision, licensee of commercial television station WVEN, Daytona Beach, FL, against EchoStar **IS DENIED**.

7. This action is taken by the Deputy Chief, Media Bureau, pursuant to authority delegated by Section 0.283 of the Commission's rules, 47 C.F.R. § 0.321.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Media Bureau